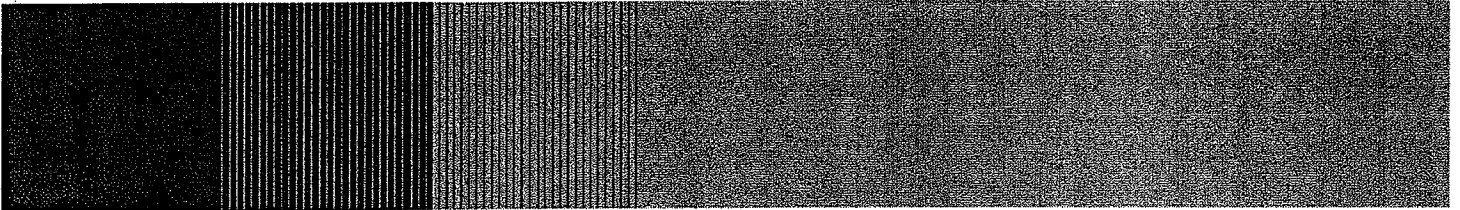


# EXHIBIT AA

May 10, 2007

# **Survey of Dental Protector Consumers**



**NERA**  
Economic Consulting

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## Qualifications and Assignment

**I. Qualifications and Assignment****A. Qualifications**

I, Eugene Ericksen, am a Professor of Sociology and Statistics at Temple University and a Special Consultant with NERA Economic Consulting. NERA was founded in 1961 and provides research and analysis in the economics of competition, regulation and finance. I received a B.S. Degree in Mathematics from the University of Chicago in 1963 and an M.S. Degree in Mathematical Statistics from the University of Michigan in 1965. After that, I earned a Ph.D. in Sociology with a concentration in Population Studies from the University of Michigan in 1971. In my doctoral dissertation, I developed a method for estimating the size and characteristics of state and county populations for years where census data were unavailable. I have taught at Temple University since 1971, with my courses concentrated on Statistical Methodology, Research Design, Surveys and Sampling, and Sociological and Demographic Methods. I have also taught courses in Urban Sociology, Race and Ethnicity, Family Sociology, and Social Stratification. In 1986, I became a Special Consultant to NERA. In 1988, I was promoted to the rank of Professor at Temple University, and in 1991 I was elected to be a Fellow of the American Statistical Association. From 1989 through 1991 I served as Co-Chair of a Special Advisory Panel appointed by the Secretary of Commerce Robert Mosbacher to advise him on whether or not the 1990 Census should be adjusted for the differential racial undercount. In 2000 and 2001 I served as a consultant to the Presidential members of the Census Monitoring Board overseeing the 2000 Census.

I have written numerous publications, listed in my resume, which I have attached to this report as Appendix A. Among them are articles and reports concerning survey methodology and sampling techniques.

I have testified many times in Federal Court proceedings as an expert in survey research and statistics in general. I have testified on these matters in the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania, the Eastern District of California, the District of Massachusetts, and the Northern District of Georgia. I have also designed and conducted numerous surveys and have been accepted as an expert on these matters in the Southern District of New York, the District of Maryland and the Northern District of Indiana.

## Summary of Major Results

My current billing rate is \$560 per hour.

**B. Assignment**

I was asked to design and administer a survey to measure consumer recognition of the product name NIGHTGUARD. Specifically, the survey was designed to determine whether the mark NIGHTGUARD is a generic term. I wanted to know whether consumers of dental protectors had heard of NIGHTGUARD and whether they recognized NIGHTGUARD as a common name or brand name.

**II. Summary of Major Results**

The survey results indicate that 66 percent of respondents had heard of NIGHTGUARD. Of respondents who had heard of NIGHTGUARD, about 67 percent identified the term as a brand name. Based on these results, it is my opinion that NIGHTGUARD is a phrase associated with a particular brand and thus is not a generic term.

**III. Methodology**

In order to determine whether NIGHTGUARD is a generic or brand name, I conducted a web survey of consumers of dental protectors that are purchased from stores. Only a small part of the general population use dental protectors to prevent damage from night-time teeth grinding. Because the incidence of dental protector use is so low I administered the survey via the Internet. The use of a web survey was appropriate as recruitment via the web is a cost-efficient method for screening large numbers of potential respondents. Although the sample was not randomly chosen from the general population, it does provide reasonable estimates as to the extent to which NIGHTGUARD is recognized as a brand name.

I hired Schulman Ronca and Bucuvalas Inc. (SRBI), a nationally known survey research firm, to collect the data. SRBI wrote a computer program so that the questionnaire could be answered on the Internet, and they recruited respondents from the e-Rewards Consumer panel, an opt-in, voluntary research panel where members are asked to join by invitation only.<sup>1</sup> In order

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<sup>1</sup> More information on the e-rewards panel can be found at [www.e-rewards.com](http://www.e-rewards.com) and [http://www.e-rewards.com/researchers/eri\\_m\\_proofQuality.htm](http://www.e-rewards.com/researchers/eri_m_proofQuality.htm)

to allow SRBI and NERA the ability to monitor the survey results, sample selection occurred over a number of days. The sample was initially drawn as a random sample of the entire e-Rewards panel of members aged 18 and over. As women and older people are more likely to respond to web surveys, subsequent samples were drawn to target more males and younger individuals.

Panel members selected for the sample were sent email invitations to complete an online survey. The email invitation contained a link to the website containing the survey. Respondents to the survey earned three dollars in e-Rewards currency, which can be saved and later exchanged for rewards. See Appendix B for a copy of the email invitation.

We collected the survey data between April 30, 2007 and May 5, 2007.

### **A. Questionnaires**

I first asked respondents to report their genders and ages. Respondents under 18 and those who preferred not to report their age categories were screened out. I then asked the respondents if they had, in the previous 12 months, purchased or used athletic mouth guards, dental protectors purchased from a dentist, dental protectors purchased from a store, electric toothbrushes, fluoride rinse, teeth whitening products purchased from a dentist, or teeth whitening products purchased from a store. They were also asked if they expected to purchase or use these products in the next 12 months. The inclusion of various products in such screener questions is a common survey practice that helps both to focus the respondent's attention on the task at hand and to mask the particular product of interest. I made the distinction between dental protectors purchased from a store and those purchased from a dentist, because it is my understanding that these two types of dental protectors greatly differ in price and in fact occupy different market niches. I made the distinction between teeth whitening products purchased from a dentist and those purchased from a store so that dental protectors were not the only product where place of purchase mattered.

The relevant market for my survey is consumers of dental protectors purchased from a store. Therefore, in order to qualify for the survey, respondents needed to either have purchased or used a dental protector purchased from a store in the past 12 months or expect to purchase a dental protector purchased from a store in the next twelve months. Anyone who did not meet

## Methodology

these criteria was screened out of the survey. Respondents were also screened out if either they or someone in their household works for a marketing research firm, advertising agency, or a company that manufactures, distributes, or sells dental products.

In the main body of the questionnaire, I wanted to determine the number of respondents who had heard of NIGHTGUARD and then, to test for genericness, establish whether they thought NIGHTGUARD was a brand name or common name. Again, I used a series of dental products (both common names and brand names) to provide controls. Use of the alternative products also increased the likelihood that respondents were focused on the task and masked the ultimate survey purpose.

Before asking about NIGHTGUARD, I provided definitions of brand names and common names. To further help respondents distinguish between brand and common names, I provided an example of a product associated with a brand name (DENTYNE) and a product associated with a common name (CHEWING GUM). I then asked two questions to ascertain respondents' general understandings of the difference between product names that were brand names and product names that were common names. I chose two well-known products, CREST and TOOTHPASTE, one a brand name product and the other a generic product. Respondents who could not correctly determine if CREST and TOOTHPASTE were brand or common names were screened out.

Qualifying respondents were then asked identical questions about DENTAL FLOSS, ORAL B, NIGHTGUARD, WHITENING STRIPS, GLIDE, MOUTHWASH and LISTERINE. These products were selected so as to have a mix of dental products, both products that are common names and those that are brand names. The order in which these products were presented was rotated, so that the order of the individual products varied across respondents. Respondents were first asked whether they had heard of the product. Those who had were asked whether the product name was a brand name or common name. My data indicate that respondents were able to accurately answer these questions and were focusing on the questions being asked: of those who had heard of the branded products, 100 percent, 99.3 percent, and 98.1 percent were able to



## Methodology

identify ORAL B, LISTERINE, and GLIDE, respectively, as brand names.<sup>2</sup> In contrast, none of the respondents identified either DENTAL FLOSS or MOUTHWASH as brand names.

The survey also included a short series of questions aimed at learning whether respondents recalled seeing or hearing advertisements for the five brand name products included in the survey. If respondents had earlier indicated that they had heard of the product, they were asked whether they have seen or heard a commercial for that product. A follow-up question then determined whether the commercial was seen or heard on television, radio, or both. A second follow-up question asked the respondent to describe what they remembered about the commercial. In order to minimize respondent burden, the follow-up questions were only asked about a maximum of two products. If the respondent had recalled seeing or hearing a commercial for NIGHTGUARD, then NIGHTGUARD was always one of the two products selected. The computer program randomly selected the second product from the remaining choices.

The last four questions of the survey collected background information. Respondents were asked to report whether they wear dentures or braces. I also collected information on the respondents' education levels and employment statuses. See Appendix C for a copy of the questionnaire.

## B. Pre-test

Several steps were taken to ensure that the questionnaire was administered correctly and that respondents understood the questions and the task at hand. First, before any potential respondents were invited to complete the survey, NERA research staff tested the survey website to ensure that the questionnaire was programmed correctly. As part of this test, NERA researchers checked that skip patterns were programmed correctly, questions were complete and spelled correctly, and all programming instructions had been properly implemented.

Second, data collection began with a "slow start." Unlike in a telephone or shopping mall survey where the pre-test interviews are observed by survey research staff, web survey

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<sup>2</sup> Percentages are based on those who had heard of the product. For all products except NIGHTGUARD and GLIDE, over 98 percent of respondents had heard of the product name. About 66 percent and 69 percent of respondents had heard of NIGHTGUARD and GLIDE, respectively.

## Results

respondents cannot be observed while completing the questionnaire. Instead a web survey pre-test involves collecting data from a small number of respondents and then reviewing that data to check for any inconsistencies. The survey was pre-tested on April 30 & May 1, 2007. On these two days, 70 respondents qualified and completed the survey.<sup>3</sup> After reviewing the data from these 70 respondents, I concluded that no changes needed to be made to the questions.<sup>4</sup>

#### IV. Results

There were 152 respondents who completed the survey. There were 101 respondents, or 66.4 percent of the total sample, who had heard of NIGHTGUARD. Of these, 68, or 67.3 percent, identified the term as a brand name. If I include the 51 respondents who had never heard of NIGHTGUARD, 44.7 percent of the 152 respondents identified the term as a brand name. (Table 1).

It is more correct to exclude those respondents who have not heard of NIGHTGUARD. If a consumer has not heard of a term, he or she is not going to have a reasonable opinion as to whether the product name is a brand name. This is especially true for a niche product like dental protectors that are purchased from a store.

Because consumers of dental protectors are a hard to find population, I surveyed both previous consumers (either purchasers or users) and prospective consumers (future purchasers). This latter group is comprised of both respondents who had purchased or used the product in the past 12 months and those who had not. Thus, the sample includes a number of people who expect to purchase a dental protector in the next 12 months, but have not purchased or used one in the past year. It is likely that these respondents, who represent 44.1 percent of the sample, are

<sup>3</sup> There is no way to know how many people will respond to the email invitation in the first 24 hours. Based on the incidence of dental protector purchase/usage and SRBI's past experience with web surveys, I only expected to complete 25-30 interviews during the slow start. An unexpectedly high response rate led to the completion of 70 interviews during this time.

<sup>4</sup> I did make one change to the screening criteria on May 2. Eight respondents qualified for the survey because they expected to personally use a dental protector purchased from a store in the next 12 months but did not qualify based on any past use/purchase or future purchase expectations. It seems inconsistent to report that you would use a product that you do not intend to purchase and have not purchased or used in the past. In addition, none of these respondents had heard of NIGHTGUARD. One would expect that a prospective consumer of dental protectors would have heard of NIGHTGUARD – either because they associate the term with a particular brand or because they believe the term is a generic name. Because of these inconsistent responses, I excluded these respondents from the survey results and changed the screening criteria to screen out such respondents.

## Conclusion

less familiar with the products that are on the market. The data show some support for this hypothesis. I found that of those respondents with past experience with dental protectors that are purchased from a store, about 72 percent had heard of NIGHTGUARD. Of those respondents with no past experience with dental protectors, only 60 percent had heard of NIGHTGUARD (Table 2). Similarly, among those who had heard of NIGHTGUARD, 72 percent of those with past experience recognized the term as a brand name, compared to 60 percent of those without past experience. (Table 3)

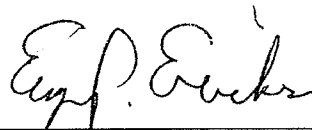
I also examined the data to see whether there were any differences by gender or age in either recognition of the term NIGHTGUARD or identification of it as a brand name. There were no statistically significant differences in the share of respondents who had heard of NIGHTGUARD either by gender or age. However, among those who had heard of NIGHTGUARD, there were differences by gender with males being more likely than females to identify NIGHTGUARD as a brand name. About 83 percent of males who had heard of NIGHTGUARD identified it as a brand name, compared to about 55 percent of females who had heard of the product (Table 4). Since women are over-represented in the sample (Table 5), my estimate of the share of dental protector consumers who identify NIGHTGUARD as a brand is conservative.

## V. Conclusion

Based on my professional experience and the results of the survey, I conclude that NIGHTGUARD is not a generic term. The results indicate that the majority of respondents who have heard of NIGHTGUARD recognize it a brand name.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Philadelphia, Pennsylvania, on May 10, 2007.

By:



Eugene P. Ericksen

# NERA

Economic Consulting

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**Table 1: Share of Respondents who Identify NIGHTGUARD as a Brand Name**

|                             | Share of Respondents<br>who Had Heard of |                       |
|-----------------------------|--|-----------------------|
|                             | NIGHTGUARD <sup>1</sup>                  | Share of Total Sample |
| Brand Name                  | 67.3%                                    | 44.7%                 |
| Common Name                 | 24.8%                                    | 16.4%                 |
| Don't know/ Not sure        | 7.9%                                     | 5.3%                  |
| Had not heard of NIGHTGUARD | 0.0%                                     | 33.6%                 |
| Total                       | 100.0%                                   | 100.0%                |
|                             | (101)                                    | (152)                 |

<sup>1</sup> Fifty-one respondents who have not heard of NIGHTGUARD have been omitted from this analysis.

Source: NERA survey

Question 3c: Have you heard of NIGHTGUARD?

Question 3c1: Is NIGHTGUARD a brand name, a common name, or do you not know?

Table 2: Recognition of NIGHTGUARD by Past Dental Protector Experience

|                             | Past Dental Protector<br>Experience <sup>1</sup> | No Past Dental<br>Protector Experience <sup>2</sup> | Total  |
|-----------------------------|--|---|--------|
|                             |  |   |        |
| Heard of NIGHTGUARD         | 71.8%  | 59.7%   | 66.4%  |
| Had not heard of NIGHTGUARD | 18.8%  | 31.3%   | 24.3%  |
| Don't know/ Not sure        | 9.4%   | 9.0%  | 9.2%   |
| Total                       | 100.0%   | 100.0%  | 100.0% |
|                             | (85)   | (67)  | (152)  |

<sup>1</sup> Includes respondents who in the past 12 months either purchased or used a dental protector that was purchased from a store.

<sup>2</sup> Includes respondents who in the past 12 months did not purchase or use a dental protector that was purchased from a store, but expect to purchase one in the next 12 months.

Source: NERA survey

Question 3c: Have you heard of NIGHTGUARD?

**Table 3: Brand Recognition of NIGHTGUARD by Past Dental Protector Experience<sup>1</sup>**

|                      | Past Dental Protector<br>Experience <sup>2</sup> | No Past Dental<br>Protector Experience <sup>3</sup> | Total  |
|----------------------|--|---|--------|
|                      |  |   |        |
| Brand Name           | 72.1%  | 60.0%   | 67.3%  |
| Common Name          | 23.0%  | 27.5%   | 24.8%  |
| Don't know/ Not sure | 4.9%   | 12.5%   | 7.9%   |
| Total                | 100.0%   | 100.0%  | 100.0% |
|                      | (61)   | (40)  | (101)  |

<sup>1</sup> Fifty-one respondents who had not heard of NIGHTGUARD have been omitted from this analysis.

<sup>2</sup> Includes respondents who in the past 12 months either purchased or used a dental protector that was purchased from a store.

<sup>3</sup> Includes respondents who in the past 12 months did not purchase or use a dental protector that was purchased from a store, but expect to purchase one in the next 12 months.

Source: NERA survey

Question 3c1: Is NIGHTGUARD a brand name, a common name, or do you not know?

Table 4: Brand Recognition of NIGHTGUARD by Gender<sup>1</sup>

|                      | Female | Male   | Total  |
|----------------------|--------|--------|--------|
| Brand Name           | 54.5%  | 82.6%  | 67.3%  |
| Common Name          | 36.4%  | 10.9%  | 24.8%  |
| Don't know/ Not sure | 9.1%   | 6.5%   | 7.9%   |
| Total                | 100.0% | 100.0% | 100.0% |
|                      | (55)   | (46)   | (101)  |

<sup>1</sup> Fifty-one respondents who had not heard of NIGHTGUARD have been omitted from this analysis.

Source: NERA survey

<sup>2</sup> Question 3c1: Is NIGHTGUARD a brand name, common name, or do you not know?



Table 5: Gender by Age Category

|        | <u>Ages 18 to 39</u> | <u>Ages 40+</u> | <u>Total</u> |
|--------|----------------------|-----------------|--------------|
| Female | 55.7%                | 53.1%           | 54.6%        |
| Male   | 44.3%                | 46.9%           | 45.4%        |
| Total  | 100.0%               | 100.0%          | 100.0%       |
|        | (88)                 | (64)            | (152)        |

Source: NERA survey

# **Appendix A**

## NERA

Economic Consulting

### **Eugene Pennell Ericksen**

Special Consultant

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www.nera.com

## **EUGENE PENNELL ERICKSEN**

Dr. Ericksen received an M.A. degree in Mathematical Statistics and Ph.D. degree in Sociology at the University of Michigan.

Dr. Ericksen is a Professor of Sociology and Statistics at Temple University. In addition to statistical sampling, his fields of expertise include survey research and demographic methods. At Temple University, Dr. Ericksen has concentrated his teaching efforts in three areas: 1) statistics, research design and survey research methodology; 2) stratification and race and ethnic relations; and 3) demography and human ecology. He has taught extensively at both the graduate and undergraduate levels

At NERA, Dr. Ericksen serves as a special consultant on matters of sampling, surveys and demography. In addition to the selection of samples, his survey expertise concerns the development of survey questionnaires and the analysis of questionnaire data. As a demographic consultant, he specializes in matters concerning census data and the calculation of post-censal estimates for local areas. He has developed methods of computing estimates for local areas when census data are unavailable and has done research on methods of measuring and adjusting for the undercount in the United States census. He has testified before federal and state congressional committees, federal and state courts and the Nuclear Regulatory Commission. He was the Co-Chair of the Special Advisory Committee on the 1990 Census, appointed by the Secretary of Commerce to advise him on the possibility of adjusting the 1990 Census for differential undercount.

Dr. Ericksen has designed samples and directed surveys for many clients in the public and private sectors, frequently for purposes of litigation. Dr. Ericksen's industry experience includes pharmaceuticals, automobiles, health and hospitals, insurance, radio and television, and retail stores. Dr. Ericksen has published articles in the *Journal of the American Statistical Association*, *Demography*, *American Sociological Review*, *Population Studies* and several other journals. He is a Fellow of the American Statistical Association.

Eugene Pennell Ericksen

## Education

### University Of Michigan

Ph.D., Sociology, 1971

M.A., Mathematical Statistics, 1965

### University Of Chicago

B.S., Mathematics 1963

## Professional Experience

### Temple University

Philadelphia, Pennsylvania

1992-Present Department of Statistics

1974-Present Department of Sociology

1988-Present Professor

1978-1988 Associate Professor

1974-1978 Assistant Professor

At Temple University Dr. Ericksen has concentrated his teaching efforts in three areas: 1) statistics, research design and survey research methodology; 2) stratification and race and ethnic relations; and 3) demography and human ecology. He has taught extensively at both the graduate and undergraduate levels. In the 1980 Spring Semester, as part of the Experimental Student Intern Program at the U. S. Bureau of the Census, he taught a special course training undergraduates to become enumerators in the 1980 Census. In the summer of 1984, Dr. Ericksen taught a course in survey sampling as part of the 37th Annual Symposium on Survey Research Techniques, Institute for Survey Research, University of Michigan.

### NERA Economic Consulting

Philadelphia, PA

1986-Present Special Consultant

At NERA, Dr. Ericksen serves as a special consultant on matters of sampling, surveys and demography. In addition to the selection of samples, his survey expertise concerns the development of survey questionnaires and the analysis of questionnaire data. As a demographic consultant, he specializes in matters concerning census data and the calculation of post-censal estimates for local areas.

Eugene Pennell Ericksen

**Mathematica Policy Research, Inc.**

Plainsboro, New Jersey

1981-1984 Senior Sampling Statistician

At Mathematica Policy Research, Dr. Ericksen was responsible for supervising the sample design of all surveys conducted by the company, covering populations as diverse as households in the United States, social security recipients, hospital emergency room episodes, hospital admissions, companies in the United States, physicians, and working women. He also directed a survey on the costs of providing services to undocumented aliens in New York City hospitals and another concerning issues of working women. While at MPR, Dr. Ericksen conducted statistical evaluation projects including several which were the basis for expert testimony in litigation. Furthermore, he was the chief technical advisor for plaintiffs in a number of lawsuits concerning the adjustment of the 1980 Census.

**Temple University**

Philadelphia, Pennsylvania

1970-1981 Institute for Survey Research

1974-1981 Study Director1970-1981 Sampling Statistician

At the Institute for Survey Research at Temple University, Dr. Ericksen was responsible for the sample design on all surveys conducted by the Institute. His duties included constructing sampling frames (especially of a national universe of households), adapting these frames to sampling from lists, drawing the samples, evaluating their quality and calculating statistical estimates with variances and confidence intervals.

**University Of Michigan**

Ann Arbor, Michigan

Population Studies Center

1969-1970 Student Fellow1967-1968 Student Associate, Sampling Section, Institute for Social Research

At the Population Studies Center of the University of Michigan, Dr. Ericksen wrote his dissertation under a joint contract with the Census Bureau. The objective of this project was to develop a method for combining sample survey data with symptomatic information for computing local estimates.

**Balham and Tooting College of Commerce**

London, United Kingdom

1966-1967 Lecturer in Statistics

Eugene Pennell Ericksen

## Honors and Professional Activities

Co-Chair, Special Advisory Panel on the 1990 Census. This panel was appointed by the Secretary of Commerce to advise him on the possible correction for undercount of the 1990 Census.

Associate Editor, *Journal of the American Statistical Association*, 1989-91.

Section K Representative to the American Association for the Advancement of Science, 1987-90.

Member, Executive Committee and Program Chair for the 1985 Meetings of the American Statistical Association Section on Survey Research Methods (elected position) 1984-85.

Reviewer of submitted articles, *Journal of the American Statistical Association*, *The American Statistician*, *Demography*, *American Sociological Review*, *Mathematical Sociology*, *Social Forces*, and *Sociological Forum*.

Proposal Reviewer, National Science Foundation (1975 to present), especially for the Center for Measurement Methods and Data Resources. Dr. Ericksen has also consulted with the Center on the development of standard practices for evaluating surveys.

Member, panel appointed by the National Academy of Sciences to evaluate Census Bureau methods for estimating post-censal population size and per capita income of local areas.

Chair, Subcommittee to Review Proposed Internal Surveys of the American Statistical Association, 1978-83.

Publications Liaison, Section on Survey Research Methods, 1978.

Member, panel appointed by the National Academy of Sciences to evaluate the use of microsimulation models for the evaluation of welfare and other federal entitlement programs.

Member, Board of Review, ASA Project on the Assessment of Survey Research Practices. The Board evaluated the report entitled, "Development of Survey Methods to Assess Survey Practices," by Barbara A. Bailar and C. Michael Lanphier, (ASA, 1978), 1976-77.

Founding member of the Executive Committee, Subsection on Survey Research Methods, 1975-77.

Eugene Pennell Ericksen

## **Written Testimony Before Legislative Bodies**

Testimony on the 2000 Census, given on March 28, 2001 before the U. S. Senate Committee on Commerce, Science and Transportation, John McCain (R-Arizona), Chair.

Testimony on the 2000 Census, given on September 17, 1998 before the U. S. House of Representatives Committee on Government Reform and Oversight Subcommittee on the Census, Dan Miller (R-Florida), Chair.

Testimony on the 1990 Census, given on June 27, 1991 before the U. S. House of Representatives Committee on Post Office and Civil Service Subcommittee on Census and Population, Thomas C. Sawyer (D-Ohio), Chair.

Testimony on the 1990 Census, given on September 11, 1990 before the U. S. House of Representatives Committee on Post Office and Civil Service Subcommittee on Census and Population, Thomas C. Sawyer (D-Ohio), Chair.

Statement on the 1990 Census, given on January 30, 1990 before the U. S. House of Representatives Committee on Post Office and Civil Service Subcommittee on Census and Population, Thomas C. Sawyer (D-Ohio), Chair.

Testimony on the 1990 Census, given on September 4, 1986 before the Senate Committee on Governmental Affairs, Subcommittee on Energy, Nuclear Proliferation and Government Processes, Thad Cochran (R-Mississippi), Chair.

Testimony on the 1990 Census, given on July 24, 1986 before the House Committee on Post Office and Civil Service, Subcommittee on Census and Population, Robert Garcia (D-New York), Chair.

Evaluation of HUD Survey on Homelessness, given on December 4, 1985 before Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs of the U. S. House of Representatives, Henry Gonzalez (D-Texas), Chair.

Comment on the Design of the 1980 Census, given on April 13, 1984 before the Subcommittee on Census and Population, Committee on Post Office and Civil Service of the U. S. House of Representatives, Katie Hall (D-Indiana), Chair.

Summary of a report on voting patterns in state judicial primaries, given on November 30, 1983 before the Judiciary Committee of the Pennsylvania State Senate, Richard Snyder (R-Lancaster), Chair.

Eugene Pennell Ericksen

## **Publications**

"Sexuality Research Methods," (2006) *The Blackwell Encyclopedia of Sociology*, George Ritzer (ed.), Malden, MA: Blackwell Publishing Co. (with Julia Ericksen).

"Use of Surveys in Intellectual Property Disputes," (2005) *Economic Approaches to Intellectual Property Policy, Litigation and Management Issues*, Gregory K. Leonard and Lauren J. Stiroh (eds.) National Economic Research Associates, Inc.

"An Evaluation of the 2000 Census and Census Bureau Efforts to Measure the Gross and Net Rates of Undercount," (2001) in *North Dakota Law Review*, Volume 77.4.

"Errors in the Census," (2000) in *Encyclopedia of the U.S. Census*, Margo J. Anderson (ed.) Congressional Quarterly, Washington, DC. 206 – 209.

"Problems in Sampling the Native American and Alaska Native Populations," (April, 1997) *Population Research and Policy Review*, 16:43-59. Also in *Changing Numbers, Changing Needs: American Indian Demography and Public Health*, 1996, National Academy of Press, Washington, D.C. 113-129.

Book Reviews, "A Journalist's Guide to Public Opinion Polls" by Sheldon R. Gawiser and G. Evans Witt, and "Reference Guide on Survey Research" by Shari Seidman Diamond, *Public Opinion Quarterly* (Spring 1996). 159-165.

"Comment on Papers by Breiman, Freedman and Wachter, and Rolph and Belin," *Statistical Science*, (November, 1994) 9:511-515. (with Stephen Fienberg and Joseph B. Kadane).

"Beyond the Net Undercount: How to Measure Census Error," *Chance*, (Fall, 1993) 6:38-43, 14 (with Teresa K. DeFonso).

Comment on "Should We Have Adjusted the 1980 Census?" by David Freedman and W.S. Navidi, *Survey Methodology*, (June, 1992) 18:52-58 (with Joseph B. Kadane).

"A Validation Experiment With TRIM2," 1991 in *The Uses of Microsimulation Models to Evaluate Social Welfare Programs*, Constance Citro (ed.) National Academy Press, Washington, DC (with Michael L. Cohen, Lynne Billard, and David Betson).

Comment on Mulry, Mary S. and Spencer, Bruce D., "Total Error in PES Estimates of Population," (1991) *Journal of the American Statistical Association*, 86:855-7, December (with Joseph B. Kadane).

"1990 Census Adjustment-- Yes or No?" *Stats* 4:4-5, 22-25.

"Adjusting the 1980 Census of Population and Housing," *Journal of the American Statistical Association*, December 1989, 84:927-944 (with Joseph B. Kadane and John W. Tukey).



Eugene Pennell Ericksen

**Publications (Continued)**

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"A Survey of Undocumented Aliens in HHC Facilities," report submitted to New York City Health and Hospitals Corporation, June 1983 (with Andrea Vayda and William Borden) and later submitted to Federal District Court (Eastern District of New York) in May 1985 on behalf of plaintiffs in City of New York v. Heckler, 79 Civ. 1740.

"A DAWN Survey Design," report submitted to National Institute on Drug Abuse in August 1982 (with Richard Bucher and John Hall).

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"Population Estimation in the 1970's: The Stakes are Higher," report submitted in May 1975 to the U.S. Bureau of the Census.

"Test of a Statistical Procedure for Computing Estimates for Local Areas," report submitted in January 1973 to the U.S. Bureau of the Census.

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**Civil Proceedings In Which Eugene P. Ericksen  
Has Testified In The Last Four Years**

| <b>Case Name</b>   | <b>Court</b>   | <b>Type of Testimony**</b> | <b>Year</b> |
|--|--|----------------------------|-------------|
| Am General and General Motors Corporation, v. DaimlerChrysler Corporation* | U.S. District Court, Northern District of Indiana      | Trial                      | 2002        |
| *United States of America v. Broadcast Music Inc. et ano.                  | U.S. District Court, Southern District of New York     | Deposition                 | 2002        |
| Eolas Technologies, Inc. vs. Microsoft Corporation, Inc.*                  | U.S. District Court, Northern District of Illinois     | Deposition                 | 2002        |
| DeLoach v. Philip Morris*  | U.S. District Court, Middle District of North Carolina | Deposition                 | 2003        |
| Acushnet v. Nitro Leisure Products*  | U.S. District Court, Southern District of Florida      | Deposition                 | 2003        |
| AT&T v. Microsoft*   | U.S. District Court, Southern District of New York     | Deposition                 | 2003        |
| EEOC v. Carrols Corporation*   | U.S. District Court, Northern District of New York     | Deposition                 | 2003        |
| CSC* v. Yankees Entertainment and Sports Network, LLC                      | American Arbitration Association, New York City        | Arbitration Proceeding     | 2004        |
| Advanced Executive Aircraft, Limited vs. Lucas Aerospace, Ltd.*            | American Arbitration Association, New York City        | Arbitration Proceeding     | 2005        |
| Nilda Gutierrez, et al. vs. Johnson & Johnson*                             | U.S. District Court, District of New Jersey            | Deposition                 | 2006        |
| Tiffany (NJ) Inc. and Tiffany and Company vs. eBay Inc.*                   | U.S. District Court, Southern District of New York     | Deposition                 | 2006        |

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| Case Name   | Court  | Type of Testimony** | Year |
|---|--|---------------------|------|
| Bracco Diagnostics Inc., vs. Amersham Health Inc*., Amersham Health AS, and Amersham plc,<br><br>Amersham Health Inc.*, vs. Bracco Diagnostics Inc. | U.S. District Court, District of New Jersey        | Deposition          | 2006 |
| *ConMed Corporation vs. Johnson & Johnson, Inc., Ethicon, Inc., Ethicon Endo-Surgery, Inc., Johnson & Johnson Healthcare Systems, Inc.              | U.S. District Court, Southern District of New York | Deposition          | 2007 |
| *Louis Vuitton Malletier vs. Dooney & Bourke, Inc.  | U.S. District Court, Southern District of New York | Deposition          | 2007 |

\* Party that retained Dr. Ericksen

\*\* It should be noted that a Court appearance may have been preceded by a Deposition, Affidavit, and/or Report; a Deposition may have been preceded by an Affidavit and/or Report; and an Affidavit may have been preceded by a Report.

MAY, 2007

**APPENDIX B: EMAIL INVITATION**

SUBJECT: Get Rewarded for Your Time - Dental Products Study

Dear [name],

Based on your e-Rewards profile, you are invited to earn e-Rewards currency for participating in a research survey. If you qualify and complete the survey:

Full reward amount: \$3.00 in e-Rewards currency  
Full survey length: approximately 10 minutes

To complete the survey and earn e-Rewards currency, simply click the link below, or copy the URL into your browser:

<http://www.e-rewards.com/pro.do?FT=xxxxxxx>

We encourage you to respond quickly -- this e-Rewards invitation will be available only until a pre-determined number of responses have been received.

Continue to check your inbox for future opportunities to earn e-Rewards currency.

We value your time!  
The e-Rewards Team

# **Appendix C**



### **Dental Products -SCREENER**

We are conducting a research study about dental products and would like to include your opinions.

Please do not use your internet browser's back and forward buttons. Instead, use the buttons at the bottom of each screen.

Please click on the "Next>>>" button to start the survey.

S.1 Please specify your gender.

1. Female
2. Male

S.2 We would like to get a mix of individuals in the various age categories. Into which of the following categories does your age fall?

**READ LIST.**

1. Under 18 **SCREEN OUT S.2**
2. 18 to 24
3. 25 to 39
4. 40 to 54
5. 55 and older
6. Prefer not to say. **SCREEN OUT S.2**

S.3 Have you PURCHASED any of the following products either for yourself or someone else within the LAST 12 months?

**ROTATE. ALLOW FOR MULTIPLE RESPONSES.**

**Have purchased in the  
LAST 12 MONTHS**

|   |        |
|---|--------|
| Athletic Mouth Guard, a tray worn to protect teeth while playing sports | Yes/No |
|---|--------|

|  |        |
|--|--------|
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that you purchased from a dentist</u> | Yes/No |
|--|--------|

|  |        |
|--|--------|
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that you purchased from a store</u> | Yes/No |
|--|--------|

|   |        |
|---|--------|
| Electric Toothbrush, a toothbrush that is battery operated and requires recharging on a regular basis | Yes/No |
|---|--------|

|  |        |
|--|--------|
| Fluoride Rinse, a liquid dental rinse containing fluoride used to strengthen teeth | Yes/No |
|--|--------|

|  |        |
|--|--------|
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that you purchased from a dentist</u> | Yes/No |
|--|--------|

|  |        |
|--|--------|
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that you purchased from a store</u> | Yes/No |
|--|--------|

S.4 Do you expect to PURCHASE any of the following products either for yourself or someone else within the NEXT 12 months?

**ALLOW FOR MULTIPLE RESPONSES**

|   | <b>Expect to purchase in the<br/>NEXT 12 MONTHS</b> |
|---|---|
| Athletic Mouth Guard, a tray worn to protect teeth while playing sports   | Yes/No  |
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that you purchase from a dentist</u>   | Yes/No  |
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that you purchase from a store</u>   | Yes/No  |
| Electric Toothbrush, a toothbrush that is battery operated and requires recharging on a regular basis   | Yes/No  |
| Fluoride Rinse, a liquid dental rinse containing fluoride used to strengthen teeth  | Yes/No  |
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that you purchase from a dentist</u> | Yes/No  |
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that you purchase from a store</u>   | Yes/No  |

S.5 Have you personally USED any of the following products within the LAST 12 months?  
**ALLOW FOR MULTIPLE RESPONSES.**

|  | <b>Have used in the<br/>LAST 12 MONTHS</b> |
|--|--|
| Athletic Mouth Guard, a tray worn to protect teeth while playing sports  | Yes/No                                     |
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that was purchased from a dentist</u>   | Yes/No                                     |
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that was purchased from a store</u>   | Yes/No                                     |
| Electric Toothbrush, a toothbrush that is battery operated and requires recharging on a regular basis  | Yes/No                                     |
| Fluoride Rinse, a liquid dental rinse containing fluoride used to strengthen teeth   | Yes/No                                     |
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that was purchased from a dentist</u> | Yes/No                                     |
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that was purchased from a store</u>   | Yes/No                                     |

S.6 Do you expect to personally USE any of the following products within the NEXT 12 months?

**ALLOW FOR MULTIPLE RESPONSES**

**Expect to use in the  
NEXT 12 MONTHS**

|   |        |
|---|--------|
| Athletic Mouth Guard, a tray worn to protect teeth while playing sports | Yes/No |
|---|--------|

|  |        |
|--|--------|
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that was purchased from a dentist</u> | Yes/No |
|--|--------|

|  |        |
|--|--------|
| Dental Protector that prevents damage caused by teeth grinding during sleep <u>that was purchased from a store</u> | Yes/No |
|--|--------|

|   |        |
|---|--------|
| Electric Toothbrush, a toothbrush that is battery operated and requires recharging on a regular basis | Yes/No |
|---|--------|

|  |        |
|--|--------|
| Fluoride Rinse, a liquid dental rinse containing fluoride used to strengthen teeth | Yes/No |
|--|--------|

|  |        |
|--|--------|
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that was purchased from a dentist</u> | Yes/No |
|--|--------|

|  |        |
|--|--------|
| Teeth Whitening Products, such as whitening toothpastes, strips, or gel products used with a tray that whiten teeth <u>that was purchased from a store</u> | Yes/No |
|--|--------|

**IF RESPONDENT HAS NOT PURCHASED OR USED A DENTAL PROTECTOR PURCHASED FROM A STORE IN THE PAST YEAR AND DOES NOT PLAN TO PURCHASE A DENTAL PROTECTOR PURCHASED FROM A STORE IN THE NEXT YEAR, THANK AND SCREEN OUT S.6.**

S.7 Do you, or does anyone else in your household, work for a marketing research firm, advertising company or company that manufactures, distributes or sells dental products?

1. Yes **SCREEN OUT S.7**
2. No **CONTINUE**

**AT THIS POINT, DO NOT ALLOW PEOPLE TO GO BACK TO REVIEW/CHANGE THEIR ANSWERS.**

[INTRO SCREEN BEFORE Q1]

The following questions will be about *common* names and *brand* names. A *common* name is a name for a type of product that is made by a number of different companies. A brand name is a name for a product that is made by just one company.

For example, CHEWING GUM is a common name because it is a name for a type of product that is made by a number of different companies, whereas DENTYNE is a brand name because it is a product that is made by just one company.

**Please click on the "Next>>>" button once you have read about common and brand names and are ready to continue.**

Now, you will be asked some questions about some dental product names.

1.0 Have you heard of CREST?

1. Yes (have heard of)
2. No (have not heard of) [SCREEN OUT Q1.0]
3. Don't know/not sure [SCREEN OUT Q1.0]

1.1 Is CREST a brand name, a common name, or do you not know?

1. Brand name
2. Common name [SCREEN OUT Q1.1]
3. Don't know/not sure [SCREEN OUT Q1.1]

[Click here to see descriptions of common names and brand names.](#)

2.0 Have you heard of TOOTHPASTE?

1. Yes (have heard of)
2. No (have not heard of) [SCREEN OUT Q2.0]
3. Don't know/not sure [SCREEN OUT Q2.0]

2.1 Is TOOTHPASTE a brand name, a common name, or do you not know?

1. Brand name [SCREEN OUT Q2.1]
2. Common name
3. Don't know/not sure [SCREEN OUT Q2.1]

[Click here to see descriptions of common names and brand names.](#)

**AT THIS POINT, DO NOT ALLOW PEOPLE TO GO BACK TO REVIEW/CHANGE THEIR ANSWERS.**

3.0 **[ROTATE REMAINING LIST. DO NOT ALLOW RESPONDENTS TO GO BACK TO REVIEW/CHANGE THEIR ANSWERS FOR OTHER PRODUCTS]**

a. Have you heard of DENTAL FLOSS

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO B]
3. Don't know/not sure [SKIP TO B]

a.1 Is DENTAL FLOSS a brand name, a common name, or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)

b. Have you heard of ORAL B?

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO C]
3. Don't know/not sure [SKIP TO C]

b.1 Is ORAL B a brand name, a common name, or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)

c. Have you heard of NIGHTGUARD?

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO D]
3. Don't know/not sure [SKIP TO D]

c.1 Is NIGHTGUARD a brand name, a common name, or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)

d. Have heard of WHITENING STRIPS?

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO E]
3. Don't know/not sure [SKIP TO E]

d.1 Is WHITENING STRIPS a brand name, a common name, or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)

e. Have you heard of GLIDE?

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO F]
3. Don't know/not sure [SKIP TO F]

e.1 Is GLIDE a brand name, a common name or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)

f. Have you heard of MOUTHWASH?

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO G]
3. Don't know/not sure [SKIP TO G]

f.1 Is MOUTHWASH a brand name, a common name or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)



g. Have you heard of LISTERINE?

1. Yes (have heard of)
2. No (have not heard of) [SKIP TO Q4]
3. Don't know/not sure [SKIP TO Q4]

g.1 Is LISTERINE a brand name, a common name or do you not know?

1. Brand name
2. Common name
3. Don't know/not sure

[Click here to see descriptions of common names and brand names.](#)

Next, you will be asked about some advertisements for dental products.

4.0 Do you recall seeing or hearing a specific commercial on television or on the radio for the following...

**ROTATE**

|                |            |                     |
|----------------|------------|---------------------|
| a. [IF Q1.0=1] | CREST      | Yes/ No/ Don't know |
| b. [IF Q3b=1]  | ORAL B     | Yes/ No/ Don't know |
| c. [IF Q3c=1]  | NIGHTGUARD | Yes/ No/ Don't know |
| d. [IF Q3e=1]  | GLIDE      | Yes/ No/ Don't know |
| e. [IF Q3g=1]  | LISTERINE  | Yes/ No/ Don't know |

Now, you will be asked a few follow-up questions about one or two of the products whose commercials you have seen or heard.

QUESTIONS 4.1 THROUGH 4.5 SHOULD APPEAR IN SAME ORDER AS THEY DID ON THE GRID IN 4.0

SELECT TWO PRODUCTS FROM Q4 FOR WHICH RESPONDENT HAS SEEN OR HEARD COMMERCIALS. SELECTION SHOULD BE RANDOM, EXCEPT IF Q4c=Yes, ALWAYS SELECT NIGHTGUARD. INDICATE PRODUCTS SELECTED IN DATA AS PRODUCT1 & PRODUCT2

[ASK IF CREST SELECTED, ELSE SKIP TO NEXT PRODUCT]

4.1 Where do you recall seeing or hearing a specific commercial for CREST?

1. Radio
2. Television
3. Both Radio and Television
4. Don't know/not sure

4.1a What do you recall about the commercials you saw or heard for CREST?  
What did they show? What did they say? RECORD VERBATIM

[ASK IF ORAL B SELECTED, ELSE SKIP TO NEXT PRODUCT]

4.2 Where do you recall seeing or hearing a specific commercial for ORAL B?

1. Radio
2. Television
3. Both Radio and Television
4. Don't know/not sure

4.2a What do you recall about the commercials you saw or heard for ORAL B?  
What did they show? What did they say? RECORD VERBATIM

[ASK IF NIGHTGUARD SELECTED, ELSE SKIP TO NEXT PRODUCT]

4.3 Where do you recall seeing or hearing a specific commercial for NIGHTGUARD?

1. Radio
2. Television
3. Both Radio and Television
4. Don't know/not sure

4.3a What do you recall about the commercials you saw or heard for NIGHTGUARD? What did they show? What did they say? RECORD VERBATIM

[ASK IF GLIDE SELECTED, ELSE SKIP TO NEXT PRODUCT]

4.4 Where do you recall seeing or hearing a specific commercial for GLIDE?

1. Radio
2. Television
3. Both Radio and Television
4. Don't know/not sure

4.4a What do you recall about the commercials you saw or heard for GLIDE?  
What did they show? What did they say? RECORD VERBATIM

[ASK IF LISTERINE SELECTED, ELSE SKIP TO NEXT PRODUCT]

4.5 Where do you recall seeing or hearing a specific commercial for LISTERINE?

1. Radio
2. Television
3. Both Radio and Television
4. Don't know/not sure

4.5a What do you recall about the commercials you saw or heard for LISTERINE?  
What did they show? What did they say? RECORD VERBATIM

Next are just a few background questions for classification purposes.

5.0 Do you wear dentures?

1. Yes
2. No
3. Prefer not to say

6.0 Do you wear braces?

1. Yes
2. No
3. Prefer not to say

7.0 What is the highest grade of school that you completed?

1. Grade school or some high school
2. Completed high school
3. Some college but did not finish
4. Completed a two-year college degree
5. Completed a four-year college degree
6. Completed a post-graduate degree
7. Don't know/not sure

8.0 Are you currently employed...

1. Full-time
2. Part-time
3. Not employed
4. Retired
5. Don't know/not sure

**END**

Those are all the questions that we have for you today. Thank you very much for your time.